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ONE HUNDRED NINTH CONGRESS

U.S. House of Representatives
Committee on Energy and Commerce
Washington, DC 20515-6115

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June 27, 2006

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The Honorable Samuel W. Bodman
Secretary
Department of Energy
Forrestal Building
1000 Independence Avenue, S.W.
Washington, D.C. 20585

Dear Mr. Secretary:

We are concerned about what appears to be a concerted effort at the Department of Energy (DOE) to needlessly weaken the environmental, health and safety functions and responsibilities of the Department at its nuclear weapons and clean-up sites, as well as its national laboratories. We were surprised to learn last month from non-Departmental sources that the Department, apparently at your request, was circulating a detailed proposal to eliminate the position of the Assistant Secretary for Environment, Safety and Health (EH) and disperse those responsibilities throughout other offices. At least part of this proposal appears to violate 42 U.S.C. 7133(a) which requires that the following environmental responsibilities be carried out by an assistant secretary:

- (3) Environmental responsibilities and functions, including advising the Secretary with respect to the conformance of the Department's activities to environmental protection laws and principles, and conducting a comprehensive program of research and development on the environmental effects of energy technologies and programs.

This proposal was preceded by a plan by the National Nuclear Security Administration (NNSA) to implement a pilot project at the Kansas City facility that would exempt the site from the "provisions of all DOE directives involving environment, safety and health" and depend on undefined "industrial standards and existing laws to provide a regulatory regime." (Memorandum for the Manager, Kansas City Site Office from Linton Brooks, NNSA Administrator, April 12, 2006, p. 1.) "Third-party certifiers," which NNSA staff has been unable to identify, would somehow play a role in enforcing these standards and laws. What exactly is the

problem at the Kansas City Plant is not described. In fact, your own Energy Advisory Board found that this plant “has already demonstrated that they can perform” non-nuclear weapons components production effectively. (Testimony of Dr. David O. Overskei, Chairman, SEAB, before the House Subcommittee on Energy and Water Appropriations, April 26, 2006, pp. 10-11.)

This Committee, as you know, was instrumental in setting up the Office of Environment, Safety and Health and has had a keen interest over several decades in protecting the environment and the health and safety of workers of DOE contractors and the public. During the Cold War, the health and safety of workers at nuclear weapons sites was given short shrift with devastating results for those workers, including increased levels of certain cancers and berylliosis for which the Nation is now paying. And the lack of effective environmental controls during the Cold War will require the ultimate expenditure of hundreds of billions of dollars over several decades to clean up the damage caused at these sites.

We understand that this proposal was apparently developed without any systemwide analysis of the effectiveness – or lack thereof – of the environmental, safety, and health function at the Department by either internal groups, such as a management task force or the Inspector General or by an external group, such as the Government Accountability Office (GAO) or an advisory committee. The Congress, which establishes the assistant secretary positions through legislation, appears not to have been consulted. And since we have learned of this proposal and despite a flurry of briefing activity on Capitol Hill by DOE staffers, we have yet to receive anything in writing from the Department that describes and analyzes the problem that is supposed to be solved, or why this reorganization would solve such a problem.

Moreover, the Department does not appear to be coordinating its internal efforts. At the same time this plan to eliminate the assistant secretary for EH was being written, the Department was also finalizing a regulation that Congress had mandated in 2003 to codify worker safety and health directives, orders, and guidelines for the first time in DOE’s history. The Assistant Secretary for Environment, Safety and Health was given a significant role in carrying out this regulation, the purpose of which was to establish enforceable regulations and enhance “the worker protection program.” It was required under section 3173 of the Bob Stump National Defense Authorization Act for FY 2003 specifically because DOE had refused to implement enforceable health and safety regulations (71 *Fed. Reg.* 6858 et seq. (Feb. 9, 2006); 10 CFR 851 et seq.).

Finally, we are concerned that this plan may be an effort to appease DOE contractors. Over the years, they have complained about EH restrictions and tried to blame many of their budget and schedule failings on these requirements. Closer reviews of their work – such as what was done recently by GAO at the Hanford Waste Treatment Plant – rarely bear out these allegations. According to GAO, the Hanford project is behind schedule by many years and over budget by billions of dollars because DOE required a “fast-track, design-build approach” on

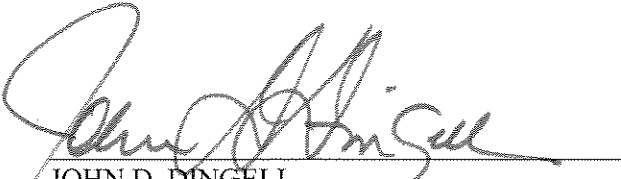
The Honorable Samuel W. Bodman
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construction that almost guarantees failure in one-of-a-kind projects and violates all “industrial standards,” and because the contractor did not use correct design codes and safety standards or track design changes. (“Hanford Waste Treatment Plant: Contractor and DOE Management Problems Have Led to Higher Costs, Construction Delays, and Safety Concerns,” Statement of Gene Aloise before the House Appropriations Subcommittee on Energy and Water Development, GAO-06-602T, April 6, 2006.)

To help us more fully understand the basis for these Departmental proposals, we have attached a list of questions and ask for a response by no later than Tuesday, July 25, 2006. If you have any questions or need additional information, please contact us, or have your staff contact Edith Holleman, Minority Counsel to the Committee on Energy and Commerce, at (202) 226-3400.

Thank you for your attention to this important matter. We look forward to your response.

Sincerely,



JOHN D. DINGELL
RANKING MEMBER



BART STUPAK
RANKING MEMBER
SUBCOMMITTEE ON OVERSIGHT
AND INVESTIGATIONS



TED STRICKLAND
MEMBER

Attachment

cc: The Honorable Joe Barton, Chairman
Committee on Energy and Commerce

The Honorable Ed Whitfield, Chairman
Subcommittee on Oversight and Investigations

The Honorable Ralph M. Hall, Chairman
Subcommittee on Energy and Air Quality

The Rick Boucher, Ranking Member
Subcommittee on Energy and Air Quality

**Questions and Requests for the Honorable Samuel L. Bodman
Secretary, U.S. Department of Energy**

1. Please provide a copy of the most current proposal to reorganize the Office of Environment, Safety and Health and the Office of Safety and Security Performance Assurance.
2. Please describe in detail the Departmental concerns with the organization and effectiveness of the Office of Environment, Health and Safety. If these concerns include the alleged “excessive risk aversion” noted by certain outside groups, please identify those groups and provide copies of any internal or external reports or other documents addressing these concerns and allegations.
3. Is there any reason why these concerns cannot be addressed by a new assistant secretary for Environment, Health and Safety and a reorganization within that office?
4. 42 U.S.C. 7133(a) was amended in the Energy Policy Act of 2005 to expand the number of assistant secretaries from six to seven. Does the Department intend to ask Congress to reduce the number back to six, or do you intend to use the empty slot for another purpose? If so, in what area do you believe there should be another assistant secretary?
5. 42 U.S.C. 7133(a) also requires that environmental responsibilities be under the purview of an assistant secretary. Until now, that has been the Assistant Secretary for Environment, Health and Safety. Where do you intend to place that responsibility?
6. The “Worker Safety Rule” (10 CFR 851 et seq.), which was mandated by Congress because of the great reluctance of the Department to codify any of its health and safety orders into an enforceable form, was finalized in February of 2006 after a lengthy rule-making process. It gives significant responsibility to the Assistant Secretary for Environment, Safety and Health. Is the Department planning to propose amendments to that rule to eliminate the Assistant Secretary’s role?
7. The National Nuclear Security Administration (NNSA) has requested that the contractor for the Kansas City Plant propose exempting itself from all DOE directives involving environment, safety, and health. The “Worker Safety Rule” codifies into regulation all of DOE’s previous health and safety directives and orders for the entire Department, including NNSA, although it also establishes a variance procedure. Is it the Department’s position that NNSA can exempt itself from 10 CFR 851 et seq.?
8. How does the Department define and establish “industrial standards” that its weapons facilities must follow and how are they going to be enforced as they are not part of the Worker Safety Rule or other legal requirements?

9. Who are “third-party certifiers,” and what role would they have in regulating the NNSA facilities?
10. One of the reasons given for combining safety and security has been the “paralyzing deadlocks” caused by the separation of these two functions. Please provide examples of those deadlocks, and explain why senior officials have failed to resolve them.